

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FTCA Flint Water Cases

Civil No. 4:17-cv-11218
(Consolidated)

This Order Relates to:
ALL CASES

Linda V. Parker
United States District Judge

THIRD STIPULATED ORDER TO MODIFY AND EXTEND
CMO 4 DISCOVERY DEADLINES

Pursuant to Case Management Order No. 4 (“CMO 4”) [ECF No. 172] section VI, the parties, by and through counsel, jointly agree and stipulate to extend discovery deadlines and modify the discovery schedule. The Court, having reviewed the proposal and finding good cause for the proposed schedule modifications, accepts and adopts the stipulated deadline extensions as set forth below.

The current deadline for completing fact discovery for the FTCA Discovery Group plaintiffs’ claims (“Fact Discovery Deadline”) is June 13, 2023. *See* Stipulated Order to Modify and Extend CMO 4 Discovery Deadlines (ECF No. 207, Feb. 6, 2023). There is good cause to extend this deadline approximately 90 days, *i.e.*, to September 13, 2023. In particular, this Court’s decision on Plaintiffs’ appeal of the Magistrate Judge’s March 6, 2023 Order was recently issued and neuropsychological examinations were not able to proceed until these issues were resolved; depositions of the minor bellwether plaintiffs

have been delayed while the parties negotiated and recently reached an agreement on additional deposition protocols; Plaintiffs served additional written discovery requests on the United States on April 14, 2023, and the parties have agreed that the United States will have until June 13, 2023, to respond to this set of discovery; and the parties are still in the process of noticing and taking additional fact witness depositions. Extending the Fact Discovery Deadline will require a concurrent extension of other pending deadlines set forth in CMO 4 and the previous stipulated orders to extend the discovery deadlines. All other terms and conditions of CMO 4 and addendums or supplements thereto shall remain in effect.

Accordingly, the parties agree, and the Court orders, that discovery deadlines are modified and extended as follows:

Lay Witness Lists (CMO 4 ¶ II(6))	By July 13, 2023, any party may supplement a prior Rule 26(a)(1) disclosure.
Home Inspections (CMO 4 ¶ II(7))	Completed by August 14, 2023.
Federal Rule of Civil Procedure (“FRCP”) 35 Defendant Medical Examinations (CMO 4 ¶ II(8)):	Completed by August 14, 2023.
Third-party document or deposition subpoenas (CMO 4 ¶ II(9)):	By August 14, 2023.

Deadline for serving written discovery on the United States	By July 13, 2023
Fact Discovery Deadline (CMO 4 ¶ II(10)):	September 13, 2023.
Motion/Response/Reply Relating to Discretionary Function Exception (CMO 4 ¶ II(11)):	The United States may file a Rule 12(h)(3) motion relating to the FTCA's discretionary function exception by October 20, 2023; Plaintiffs may file a response within 60 days of the motion; United States may file a reply within 30 days of Plaintiffs' response.
Submission of Expert Discovery Protocol to Court for approval or, if necessary, competing proposals: ¹	By August 30, 2023.
Expert Discovery (CMO 4 ¶ II(12)):	<p>a. Disclosure of expert testimony by plaintiffs, pursuant to FRCP 26(a)(2), by December 15, 2023;</p> <p>b. Disclosure of expert testimony by the United States, pursuant to FRCP 26(a)(2), by March 1, 2024;</p> <p>c. By March 29, 2024, the parties will meet and confer regarding when the parties' supplemental disclosures under FRCP 26(a)(2)(D)(ii) (if any) will be due;</p> <p>d. Depositions of experts disclosed by</p>

¹ The Expert Discovery Protocol shall include, but not be limited to, provisions to facilitate scheduling of depositions of expert witnesses disclosed pursuant to FRCP 26(a)(2) and exchanging the facts or data considered by an expert witness in forming opinions disclosed in a report, pursuant to FRCP 26(a)(2)(B)(ii), prior to an expert's deposition.

	plaintiffs by May 31, 2024; e. Depositions of experts disclosed by the United States by July 31, 2024.
Motions/Response/Reply Related to Subject Matter Jurisdiction, Summary Judgment and Daubert Motions (CMO 4 ¶ II(13)):	Motions related to subject matter jurisdiction (other than the discretionary function exception, as noted above), for summary judgment, or Daubert motions by September 11, 2024; Responses within 60 days from when the motion is filed; Replies within 30 days from when the response is filed.

Further, the parties have stipulated that they will coordinate with each other to reach mutually agreeable dates for the minors' psychological evaluations by Dr. Huffman taking into consideration not only her vacation plans but also the parents' of the minors work/personal schedules and vacation plans.

SO ORDERED.

s/ Linda V. Parker
 LINDA V. PARKER
 U.S. DISTRICT JUDGE

Dated: May 19, 2023

Dated: May 12, 2023

Respectfully submitted,

FTCA Plaintiffs Liaison Counsel:

/s/ (with permission to USA)

Cary S. McGehee (P42318)

Beth M. Rivers P33614

Pitt McGehee Palmer Bonanni & Rivers PC

117 W. Fourth Street, Ste. 200

Royal Oak, MI 48067

Tel: (248) 398-9800

cmcgehee@pittlawpc.com

/s/ (with permission to USA)

Hunter Shkolnik

Patrick Lanciotti

Paul J. Napoli

Napoli Shkolnik PLLC

360 Lexington Avenue, 11th Floor

New York, NY, 10017

Tel: (212) 397-1000

planciotti@napolilaw.com

pnapoli@napolilaw.com

Counsel for United States:

s/ Jason T. Cohen

Jason T. Cohen (ME Bar #004465)

Michael L. Williams (DC Bar #471618)

Eric Rey (DC Bar #988615)

Daniel C. Eagles (DC Bar #1035048)

Timothy B. Walthall (MA Bar #515460)

Trial Attorneys

United States Department of Justice

Civil Division, Torts Branch

Environmental Tort Litigation

175 N Street, NE
Washington, DC 20002
E-mail: Jason.T.Cohen@usdoj.gov
Phone: 202-514-0335
Fax: 202-616-4473